

Text of Proposed Regulations

In the following text, underlining indicates adopted or amended text; and strikethrough indicates deleted text.

Section 3413 is amended to read:

3413. Incompatible Activity.

Subsection 3413(a) is amended to read:

(a) ~~No e~~Employees of the department ~~Department of Corrections~~ will shall not engage in any other employment or activity inconsistent or incompatible with employment by the department ~~Department of Corrections~~. ~~Employment and e~~Conduct deemed to fall in such categories includes, but is not limited to the following:

(1) Using the prestige or influence of the state or the ~~D~~e~~partment of Corrections~~ for private gain or advantage.

(2) Employment or participation in any activity of an illegal nature.

(3) Any employment or other activity which will prevent the employee from doing his or her job as an employee of the department in an efficient and capable manner, or represents a potential conflict of interest or the appearance of a conflict of interest with his or her job.

(4) Employment which will prevent a prompt response to a call to report to duty in an emergency or when otherwise required to be present by his or her supervisor or the warden or superintendent.

~~(5) Participating as a specialist to give testimony which may result in the defendant being sentenced to an institution of the Department of Corrections except in cases wherein the department is requested to testify by the court or the defense or the prosecution counsel.~~

~~(56)~~ Using for private gain the time, facilities, equipment or supplies of the state.

~~(67)~~ Using workgroup computer technologies to do any of the following:

(A) Publish, display, or transmit information that:

Subsection 3413(a)(6)(A)(1) through (3) is renumbered to (A)1. through 3. to correct a non-substantial typographical error and amended to read:

~~(4)~~ 1. Violates or infringes on the rights of other persons, including the right of privacy.

~~(2)~~ 2. Contains defamatory, intentionally false, ~~intentionally inaccurate, abusive,~~ obscene, pornographic, profane, sexually ~~oriented or~~ harassing, threatening, racially offensive, ~~racially biased,~~ or other unlawfully discriminatory material.

~~(3)~~ 3. Encourages the use of controlled substances.

~~(4) Violates State or Federal Law.~~

(B) Conduct activities not related to the mission or work tasks of the ~~D~~epartment.

(C) Solicit the performance of activities prohibited by law.

(D) Transmit material, information, or software in violation of departmental policies, or local, State, or Federal Law.

(E) Conduct electioneering or engage in political activities.

(F) Engage in non-government related fund raising or public relations activities.

(G) Conduct personal business activities or activities for personal monetary gain.

(H) Purchase or sell unauthorized goods or services.

~~(78)~~ Providing confidential information to persons to whom issuance of such information has not been authorized, or using such information for private gain or advantage.

~~(89)~~ Receiving or accepting money or any other consideration from anyone other than the state for performance of an act which the employee would be required or expected to render in the regular course or hours of his or her employment, or as part of his or her duties as a state employee.

~~(910)~~ Receiving or accepting, directly or indirectly, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone who is doing or is seeking to do business of any kind with the state or whose activities are regulated or controlled in anyway by the state, under circumstances from which it reasonably could be inferred that the gift was intended as a reward or for the purpose of influencing any official action on the employee's part.

~~(1014) Identifying oneself and participating~~ Consulting or testifying as a specialist or an ~~departmentally designated expert witness, based on expertise gained in the course of their~~ duties, in any administrative, civil, or criminal action ~~regarding departmental matters~~ absent the prior approval of the Director or his designee, and without having given reasonable notice to the Deputy Director chief deputy general counsel of the office of legal affairs Division, ~~notwithstanding designation by the court as an "expert" as that~~ term is defined by the California Evidence Code section 720. This subsection does not

~~preclude an employee from testifying as a non expert witness regarding departmental matters pursuant to a validly issued subpoena.~~

New subsection 3413(a)(10)(A) through 3413(a)(10)(C) is adopted to read:

(A) An employee who is contacted by a fellow employee and/or their representative and/or attorney regarding ongoing or anticipated administrative, civil, or criminal proceedings for the purpose of eliciting expert testimony, as defined in Evidence Code section 720, shall, within one business day, notify in writing the chief deputy general counsel of the office of legal affairs. The written notification shall include all relevant information concerning the contact and a synopsis of their anticipated testimony. The employee whose testimony is sought shall also forward any subpoena served upon them within one business day of service.

(B) The chief deputy general counsel or designee retains the discretion to seek to quash the subpoena on any substantive or procedural grounds before the judicial body through whose authority the subpoena was issued.

(C) This subsection shall not apply when an employee has been requested to testify regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties or when an employee has been requested to testify as an expert witness by the department.

Subsections 3413(b) and (c) are amended to read:

(b) Before engaging in any outside employment, activity or enterprise, including self-employment, the employee must submit a statement to his or her division administrator or to the warden or superintendent, naming the prospective employer, if any, the employer's address and phone number, and an outline of the proposed duties or activities. This must be in sufficient detail to enable the division administrator or the warden or superintendent to determine whether the proposed activity falls in the prohibited class. The division administrator or the warden or superintendent must notify the employee of findings.

(c) Violation of these provisions may result in disciplinary actions up to and including termination of employment with the department or civil action. Criminal prosecution may result from conduct, which violates Penal Code section 502.

NOTE: Authority Cited: section 5058, Penal Code. Reference: section 19572, Government Code; section 5054, Penal Code.

New Section 3413.1 is adopted to read:

Section 3413.1 Compensation for Witnesses

(a) Pursuant to Government Code section 68097.2(a), any state employee who is obliged by a subpoena to attend as a witness before any court or other tribunal in any civil action or proceeding in connection with a matter, event, or transaction which they have expertise gained in the course of their duties, shall receive the salary or other compensation to which they are normally entitled from the department during the time the employee travels to and from the place where the court or other tribunal is located and while they are required to remain at that place pursuant to the subpoena. The employee shall also receive from the department the actual necessary and reasonable traveling expenses incurred in complying with the subpoena.

(b) Pursuant to Government Code section 68087.2(b), the department shall require:

(1) The amount of one hundred fifty dollars (\$150), to accompany the subpoena upon delivery to the person accepting the subpoena for each day that the state employee is required to remain in attendance pursuant to the subpoena. This amount shall be in the form of a check or money order made payable to the California Department of Corrections and Rehabilitation.

(2) The party at whose request the subpoena is issued to reimburse the department for the full cost incurred in paying the state employee their salary or other compensation and traveling expenses for each day that the employee is required to remain in attendance pursuant to the subpoena.

(c) Any employee who meets the requirements of subsection (a) shall submit to their immediate supervisor an itemized travel expense claim within two business days following his or her testimony.

(d) Any employee who is subpoenaed to testify as to what they witnessed, not for their expertise gained in the course of their employment with the department and received witness fees pursuant to Government Code section 68093, shall relinquish those fees to the department if the employee has been on pay status during the duration of their testimony.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 19572, 68097.1, 68097.2(a) and (b), and 68093, Government Code; Section 5054, Penal Code; Title 2, Division 5, Section 18674; and *Fox v. State Personnel Board* (1996) 49 Cal.App.4th 1034.